

ASX PROPOSES REVAMP OF DISCLOSURE OBLIGATIONS IMPOSED ON MINING AND OIL AND GAS COMPANIES



On 5 October the Australian Securities Exchange (“ASX”) released a consultation paper concerning proposed amendments to the disclosure obligations imposed on mining and oil and gas companies. The review will focus on the obligations imposed on companies under the ASX Listing Rules (“Listing Rules”) in relation to the reporting of resources, reserves and exploration information.

The stated aim of the consultation paper titled “ASX Listing Rules Review Issues Paper: Reserves and Resources Disclosure Rules for Mining and Oil & Gas Companies” is to develop a more consistent and comprehensive reporting framework that reflects world best practices and reduces the risk of investors being misled.

The consultation paper has been released at a time when investment in the Australian resources sector is at an all time high and the competition for capital has intensified. In recent times there has been a great deal of inconsistency in the reporting practices of listed resource companies and the ASX has forced

a number of companies to issue corrective notices following the identification of potentially misleading disclosures. Inconsistent reporting practices and regulatory intervention can shake investor confidence in a sector and, if resource companies wish to compete for and access capital on the best possible terms, they must communicate with transparency about their most significant assets and the source of future cash flows – resources and reserves.

The review process is not only aimed at increasing investor confidence, but also at more closely aligning the reporting obligations imposed by the Listing Rules with the reporting requirements in other developed mining and oil and gas markets. This will reduce the compliance costs associated with inconsistent reporting requirements experienced by companies operating in (or listed in) multiple jurisdictions.

While there has been mixed reaction from the mining industry, the oil and gas sector has responded more favourably to the proposed



reforms. This is largely due to the fact it is generally accepted that the existing rules governing reporting of petroleum reserves are less developed, difficult to interpret, and more open to abuse by disclosing entities.

Existing disclosure framework

Periodic disclosure

Chapter 5 of the Listing Rules sets out the main listing rule requirements specific to both listed mining and oil and gas companies. Under these provisions:

- Production and exploration companies are required to release quarterly reports to the market summarising their production, development and exploration activities and provide a brief summary of the expenditure incurred on these activities over the quarter.
- Exploration companies are also required to release to the market a quarterly cash flow report in accordance with Appendix 5B of the Listing Rules.

Under Listing Rule 4.10.15, all listed exploration companies are also required to provide a list of their tenements (or interests in tenements) in their annual reports.

Continuous disclosure

In addition to complying with the continuous disclosure obligations imposed on all listed companies, mining and oil and gas companies must also adhere to the requirements set out in Chapter 5 of the Listing Rules. Chapter 5 regulates the

reporting of exploration results and resource and reserve estimates.

Listing Rule 5.6 requires mining companies to comply with the Joint Ore Reserves Committee Code (“JORC Code”) which prescribes minimum standards, recommendations and guidelines for public reporting of exploration results and resource and reserve estimates. The JORC Code was introduced in 1989 and was last updated in December 2004.

Whereas the JORC Code applies to mining companies, oil and gas companies are not subject to an industry sanctioned reporting “code”. Instead, listed oil and gas companies are required to comply with Listing Rules 5.9 and 5.11-5.17 when publicly reporting hydrocarbon reserves, other hydrocarbon resources and exploration results. These provisions, which have been in place since 1996, require the mandatory disclosure of certain information and regulate the manner in which findings are presented – they are primarily aimed at preventing the disclosure of best and high estimates of hydrocarbon reserves in isolation.

Oil and gas companies are also required to adhere to the recommendations contained in ASX Guidance Note 8 “Continuous Disclosure: Listing Rule 3.1” which considers the level of disclosure that should be provided in relation to drilling programmes.

Since the introduction of the existing regulatory frameworks, there have been significant changes and developments in the mining and the oil and gas industries and in the reporting of mineral and

hydrocarbon resources and reserves internationally. The consultation paper identifies and considers key areas of potential reform and, in doing so, makes direct comparisons with the reporting regimes currently in place in Canada and South Africa (for mining companies) and Canada and USA (for oil and gas companies).

Proposed changes to disclosure framework

Given the different disclosure frameworks that apply to mining and oil and gas companies, the consultation paper is divided into 2 parts. As a general comment, the ASX has proposed that both sectors take a more prescriptive approach to disclosure which, if adopted, would necessitate the disclosure of much more detailed information regarding resource and reserve estimates.

Mining companies

The key issues examined by the consultation paper in relation to mining companies are:

Disclosure of exploration results - whether more detailed and specific drill-hole and intercept information should be disclosed.

Disclosure of exploration targets - whether there needs to be stricter application of the current requirement for proximate cautionary statements when reporting exploration target ranges.

Disclosure of key assumptions underpinning mineral resource and ore reserve estimates - whether the key assumptions made to support the reporting of initial, or materially changed, mineral resource and



ore reserve estimates should be disclosed.

Defining the level of study underpinning an initial ore reserve estimate - whether the completion of at least a preliminary feasibility study to support an initial ore reserve determination should be required.

Disclosure of production targets - whether, when reporting a production target or forecast financial information derived from a production target, an issuer should be required to:

- Disclose the key assumptions underpinning the production target.
- Disclose the key contingencies and risks.

Annual reporting and reconciliation of mineral resources and ore reserves - whether issuers should be required to disclose in their annual report (or in a separate document released concurrently) the results of their mandatory annual review of mineral resources and ore reserves, together with a reconciliation against estimates from the previous year.

Oil and gas companies

The key issues examined by the consultation paper in relation to oil and gas companies are:

Standardised petroleum resources definitions and a common classification system - whether a new Listing Rule requirement should be introduced mandating the reporting of petroleum reserves and other petroleum resources in accordance with the widely sponsored “Petroleum Resources

Management System” (“SPE-PRMS”).

General reporting requirements for reporting of reserves and resources - whether Listing Rules 5.11-5.13 and 5.15-5.17 should be overhauled to incorporate more prescriptive reporting requirements to provide a regulatory framework to complement SPE-PRMS.

Annual reserves and resources reporting requirements - whether a requirement should be introduced requiring annual reporting of company reserves information together with a reconciliation of reported estimates of company level reserves against the estimates from the previous year.

Disclosure of exploration and drilling results - whether Listing Rule 5.9 and ASX Guidance Note 8 be overhauled to provide for the disclosure of more meaningful information.

Disclosure of key assumptions underpinning reserve and resource estimate - whether key assumptions and other specific information should be disclosed to support the booking of initial estimates of reserves, contingent resources and prospective resources (and materially upgraded estimates).

Disclosure of production targets - whether the following information should be disclosed when reporting a production target and related forecast financial information:

- The key assumptions underpinning the production target.
- Where the production target includes or is based on

contingent resources, the key contingencies, risks and level of uncertainty associated with converting the contingent resources to reserves.

- Where the production target includes sub-marginal contingent resources, the key risks associated with those estimates and the proportion of the production target that is based on the sub-marginal contingent resources, together with a proximate cautionary statement.
- Where the production target includes prospective resources, the discovery risk, the basis for including the prospective resources and the proportion of the production target that is based on the prospective resources, together with a proximate cautionary statement.

It is also proposed that reporting a production target and related forecast financial information based solely on prospective resources will be prohibited.

Qualified reserves and resources evaluator requirements - whether the Listing Rule requirements in relation to the minimum professional qualifications and experience required to be recognised as a “qualified reserves and resources evaluator” for the purpose of estimating publicly reported petroleum reserves and resources be updated to enhance alignment with industry and international best practice.

Next steps

The ASX is seeking feedback from stakeholders on the expected



benefits, costs and any unintended consequences of the various reform options proposed by the consultation paper. Comments are sought by 27 January 2012. Following the receipt of feedback, ASX proposes consulting with JORC and other professional bodies on how best to seamlessly integrate any proposed amendments into the Listing Rules.

The proposed amendments will then be made publicly available for a further round of stakeholder input prior to being submitted to ASIC for its review pending adoption.

It is important to note JORC has spoken out against the consultation paper. It is concerned that the ASX has proposed a move away from the long established principles-based reporting on which the JORC Code is based in preference for increased prescription (including mandatory minimum reporting lists for certain types of reports). JORC has advised it will release its own paper seeking stakeholder feedback on the current version of the JORC Code and it remains to be seen how this will impact on the ASX's review process.

Conclusion

The review will no doubt result in greater consistency and enhance the quality of the existing public reporting framework. Listed mining and oil

and gas companies (and their consulting geologists) will however, need to follow developments closely and familiarise themselves with any new reporting requirements which are likely to be far more prescriptive than those set out under the existing regimes. Given the rather lengthy consultation and implementation timeframe, companies should have a sufficient lead time to adopt appropriate practices to ensure compliance with any amendments that may be adopted.

We will follow the consultation process with interest and report further in relation to any meaningful developments.

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